In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 813.

LOCAL 24 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, AND KENNETH BURKE, PRESIDENT AND BUSINESS AGENT OF LOCAL 24,

Petitioners,

vs.

REVEL OLIVER AND A. C. E. TRANSPORTATION COMPANY, INC. AND INTERSTATE TRUCK SERVICE, INC., and INTERSTATE TRUCK SERVICE, INC.,

Respondents.

PETITION FOR REHEARING.

To the Chief Justice and Associate Justices of The Supreme Court of the United States.

Respondents pray that a petition for rehearing be granted from the decision of the court entered on the 16th of May, 1960, in which this Court granted certiorari and reversed per curiam and without the argument of counsel a decision of the Court of Appeals of the State of Ohio, Ninth Judicial District, for the reasons hereinafter stated.

QUESTION.

Whether the United States Supreme Court has the right to place an interpretation upon a lawful agreement entered into by parties competent to contract, which interpretation is contrary to the direct language of the agreement and contrary to the interpretation placed upon the agreement by the parties for whom the interpretation was made.

STATEMENT AND ARGUMENT.

The per curiam decision by the United States Supreme Court, to which decision this petition is addressed, reversed a decision of the Court of Appeals of the State of Ohio, Ninth Judicial District, which in effect held that Article XXXII of the over-the-road contract entered into by the Teamsters Union and certain interstate motor carriers was effective only as to the lessors of equipment during such limited times when the owner-lessor drove the leased equipment. Section 1 of Article XXXII contains the following language:

> "(NOTE: Whenever 'owner-operator' is used in this article, it means owner-driver only, and nothing in this article shall apply to any equipment leased except where owner is also employed as a driver.)" (Page 38 of the Central States Area Over-the-Road Motor Freight Agreement, which agreement is at page 144 of the Record.)

The plain meaning of the foregoing language is that Article XXXII shall not be applied to any equipment leased to a carrier unless it is being driven by the owner, and that the meaning of owner-operator is limited to owner-driver, meaning one who drives his own equipment. The Article by its very language therefore does not apply either to the driver or to the equipment, except when it is

driven by the owner. This was unquestionably the intention of the parties, based upon the following statements by counsel for the Union and the Union president.

During the trial of the Common Pleas case, Mr. Previant, counsel for the Teamsters Union, made the following statement in objecting to the introduction of certain testimony:

> "Mr. Previant: If the Court please, I believe we are getting into an area here that is not covered by the pleadings or by the contract for the contract clause which is charged as a violation. I call the Court's attention to the fact that the clause or article which is challenged here is where the owner of a vehicle is the driver. The line of questioning now is directed to a relationship which is entirely to that type of relationship that is a relationship between some other person who drives the tractor which is owned by the Plaintiff here. We believe that is entirely foreign to the issues in this case." (Record 58.)

Later in the trial of the case before the Common Pleas Court, Mr. Previant made the following statement:

> "Mr. Knee pointed out in his Article 32, which is here under attack, the union says on its very face it is a device for the purpose of preserving the wage rates and working conditions of drivers as such. It applies only to that owner-driver who drives his own equipment. * * *" (Record 93.)

Witness Blunden was presented by the Teamsters Union for the purpose of explaining the origin of Article XXXII, and upon direct examination he testified as follows:

> "Q. The union's sole concern of Article 32 is as they apply to the driver?
>
> A. That is correct." (Record 123.)

Again commenting on the meaning of the Article, Mr. Previant in his opening statement in the Court of Appeals made the following statement:

> "I want to close this opening statement by again emphasizing that we are dealing here only with the man who owns and drives his own piece of equipment, while he is driving that equipment. We don't care what happens when somebody else is driving that equipment. * * *" (Record 202.)

Jimmy Hoffa, president of the Teamsters International Union, was placed upon the stand in the Court of Appeals and testified as to his understanding of the application of Article XXXII as follows:

> "Q. What is the common type of owner-operator in the area covered by this contract, the typical one?
>
> A. A man who owns and drives his own individual piece of equipment.
>
> Q. A single piece of equipment?
>
> A. That is correct.
>
> Q. Will you state whether or not this article was designed primarily for the person you have just described?
>
> A. Very clearly indicates, in the very opening section, that it only applies to the driver-owner of the piece of equipment." (Record 217.)

This honorable court recognized apparently the extent of the application of Article XXXII in its original opinion in this case (358 U. S. 283) when it made the following comment in paragraph one of its opinion:

> "* * * Article XXXII of this collective bargaining agreement prescribes terms and conditions which regulate the minimum rental and certain other terms of lease when a motor vehicle is leased to a carrier by an owner who drives his vehicle in the carrier's service * * *."

And in the first sentence of the second paragraph of that opinion, this Court made the additional comment:

> "The Article is in express terms made applicable only to a lessor-driver when he himself drives his vehicle in the business of the lessee-carrier * * *."

In presenting this petition for rehearing, petitioner is mindful of the provisions of Rule 45 of the Revised Rules of Court, which provides as follows:

> "The court looks with disfavor on the submission of cases on briefs without oral argument and therefore may, notwithstanding such submission, require oral argument by the parties."

There can be little question but what the decision of this Court in its per curiam decision radically altered and added to its original decision in this case. Originally this Court said that Article XXXII was applicable to owner-drivers, and in the per curiam decision this Court said it was also applicable to all leased equipment, whether driven by employees of the lessor or not.

It was indeed difficult for counsel for the owner-operator and the carriers to explain how this Court could make the Federal Labor Act applicable to an independent contractor in view of the explicit provision of Section 2(3) of the National Labor Relations Act and in view of the very explicit holding of the trial court of Ohio that Revel Oliver was such an independent contractor. It becomes doubly difficult for counsel to explain to clients how the Supreme Court of the United States could find that Article XXXII was applicable to leased equipment when it was driven by employees of the lessor. It becomes painfully difficult to explain to clients how this could be done without their counsel having an opportunity to at least address the court upon the subject.

Your petitioners therefore very respectfully pray that this Court will grant this petition for rehearing and will permit counsel an opportunity to appear personally before the court on the question presented in this appeal.

Respectfully submitted,

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Counsel for Revel Oliver, Respondent.

CERTIFICATE.

The undersigned, sounsel for petitioning respondents, hereby certify that the attached petition for rehearing is presented to this honorable court in good faith and not for the purpose of delay.

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